

must forward the record, including the application, notice of untimely receipt, and rebuttal, to the appropriate determining official (*see* paragraph C.1. of Appendix D to this part) for an initial determination on the issue of untimely receipt. The Component does not need to investigate the merits of the application before forwarding the record.

5. After making an initial determination on the issue of untimely receipt, the determining official must follow the procedures in Appendix D to this part. In addition, if the determining official finds that the application was timely, the official may:

- i. Return the application to the Component concerned for processing on the merits according to this part, or
- ii. Make a recommendation to the DOHA to grant all or part of the application as described in paragraph D to this Appendix.

#### C. INITIAL DETERMINATIONS

The standards in Appendix B to this part must be applied when considering the merits of a waiver application. After making an initial determination, the DOHA must follow the procedures at paragraph F to this Appendix and may take the following actions regarding waiver applications referred under paragraph A.4.ii. or B.5.ii. to this Appendix:

1. Make an initial determination denying a waiver application in its entirety; or
2. Make an initial determination granting all or part of a waiver application.

#### D. RECOMMENDATION TO THE DOHA TO GRANT ALL OR PART OF AN APPLICATION

Referrals to the DOHA must include the entire record along with the recommendation and administrative report described in paragraph E to this Appendix. The record and the report must be sent to: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, VA 22203-1995.

#### E. RECOMMENDATION AND ADMINISTRATIVE REPORT

The recommendation and administrative report required by paragraph D to this Appendix must describe the recommended action (and its reasons) and the following:

1. The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located.
2. The aggregate amount of the debt, including an itemization showing the elements of the aggregate amount.
3. The date the erroneous payment was discovered.
4. The date the recipient was notified of the error and a statement of the erroneous amounts paid before and after receipt of such notice.

5. A summary of the facts and circumstances describing how the erroneous payment occurred; the recipient's knowledge of the erroneous nature of the payment; the steps taken by the recipient to bring the matter to the attention of the appropriate official; and the Component's response, if any.

6. A finding of whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant and the reasons for such a finding.

7. Legible copies or the originals of supporting documents, such as leave and earnings statements, notifications of personnel actions, travel authorizations and vouchers, and military orders.

8. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

#### F. PROCESSING AFTER AN INITIAL DETERMINATION

After making an initial determination, the DOHA must:

1. Notify the applicant if all or part of the waiver application is denied. The notification must explain:

- i. The determination and the reasons for it.
- ii. The appropriate Component action to resolve the debt as a consequence of the determination if it is or becomes a final action (the finality of an initial determination is explained at paragraph G to this Appendix).
- iii. The appeal process (as explained in Appendix F to this part) if the determination does not grant the entire application or does not contain a finding of timely receipt.

2. Notify the Component concerned when and if the determination is a final action. The notice must explain:

- i. The determination and its the reasons.
- ii. The appropriate Component action to resolve the debt as a consequence of the determination.

#### G. WHEN AN INITIAL DETERMINATION IS FINAL

A final action is an initial determination that grants the entire waiver application or finds that the application was timely received. Also, an initial determination (including one of untimely receipt) is a final action if the determining official does not receive an appeal within 30 days of the date of the initial determination (plus any extension of up to 30 additional days granted by the determining official for good cause shown).

#### APPENDIX F TO PART 284—APPEALS

##### A. WHO MAY APPEAL

An applicant may appeal if an initial determination denies all or part of a waiver application or finds that the application was

not received by the Component concerned within the time limit required by statute.

#### B. WHEN AND WHERE TO SUBMIT AN APPEAL

1. When the determining official is not in the DOHA, the determining official must receive an applicant's appeal within 30 days of the date of the initial determination. The determining official may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. The appeal shall be processed under the procedures in paragraphs C through K to this Appendix.

2. When the determining official is in the DOHA, the DOHA must receive an applicant's appeal within 30 days of the date of the initial determination. The DOHA may extend this period for up to an additional 30 days for good cause shown. No appeal may be accepted after this time has expired. The appeal shall be considered to be a request for reconsideration and shall be processed under the procedures in paragraphs L through Q of this Appendix.

#### C. CONTENT OF AN APPEAL

No specific format for an appeal is required however it must be written and signed by the applicant, the applicant's authorized agent, or the applicant's attorney. In addition, it should:

1. Provide the applicant's mailing address.
2. Provide the applicant's telephone number.
3. Provide the applicant's social security number when required by the Component concerned.
4. Identify specific:
  - i. Errors or omissions of material and relevant facts.
  - ii. Legal or equitable (under the standards in Appendix B to this part) considerations that were overlooked or misapplied.
  - iii. Conclusions that were arbitrary, capricious, or an abuse of discretion.
5. Present evidence of the correct or additional facts alleged.
6. Explain the reasons why the findings or conclusions should be reversed or modified.
7. Have attached copies of documents referred to in the appeal.
8. Include or have attached statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the appeal.

#### D. DETERMINING OFFICIAL'S REVIEW

The determining official must review an applicant's appeal, and affirm, modify, or reverse the initial determination.

1. When the determining official grants the entire waiver appeal or grants the application to the extent requested in the appeal after review of an appeal in a case involving

a debt in the aggregate amount of \$1,500 or less, the determining official must notify the applicant in writing and the Component concerned if the determining official is not an official of the Component concerned. The notice must explain the appropriate action to resolve the debt. This is a final action.

2. When the determining official finds that the application was received within the time limit required by statute after review of an appeal concerning the untimely receipt of the waiver application, the determining official must notify the applicant in writing and take the appropriate action under paragraph B.5. of Appendix D to this part or paragraph B.5. of Appendix E to this part, as appropriate.

3. In all other cases, the determining official must forward the appeal to the DOHA according to paragraph E. of this Appendix. The determining official must prepare a recommendation and administrative report (as explained in paragraph F to this Appendix) and send a copy of the administrative report to the applicant with a notice that the applicant may submit a rebuttal to the determining official (as explained in paragraph G to this Appendix).

4. The determining official must date stamp the applicant's rebuttal on the date it is received.

#### E. SUBMISSION OF APPEAL TO THE DOHA

The determining official must send the entire record along with the recommendation and administrative report required by paragraph F to this Appendix no earlier than 31 days after the date of the administrative report or the day after the applicant's rebuttal period, as extended, expires, to the following address: Defense Office of Hearings and Appeals, Claims Division, P.O. Box 3656, Arlington, Virginia 22203-1995.

#### F. RECOMMENDATION AND ADMINISTRATIVE REPORT

The recommendation and administrative report required by paragraph D.3. to this Appendix must describe the recommended action (and its reasons) and include:

1. The names and mailing addresses of each employee, member, or other person from whom collection is sought, or a statement that the person cannot reasonably be located.
2. The aggregate amount of the debt, including an itemization showing the elements of the aggregate amount.
3. The date the erroneous payment was discovered.
4. The date the recipient was notified of the error and a statement of the erroneous amounts paid before and after receipt of such notice.
5. A summary of the facts and circumstances describing how the erroneous

payment occurred; the recipient's knowledge of the erroneous nature of the payment; the steps taken by the recipient to bring the matter to the attention of the appropriate official; and the Component's response;

6. A finding of whether there is any indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant and the reasons for such a finding.

7. Legible copies or the originals of supporting documents, such as leave and earnings statements, notifications of personnel actions, travel authorizations and vouchers, and military orders.

8. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) of the applicant or other persons in support of the application.

#### G. APPLICANT'S REBUTTAL

An applicant may submit a written rebuttal, signed by the applicant or the applicant's agent or attorney, in response to the recommendation and administrative report. The rebuttal must be received by the determining official within 30 days of the date of the recommendation and administrative report. The determining official may grant an extension of up to an additional 30 days for good cause shown. The rebuttal should include:

1. An explanation of the points and reasons for disagreeing with the report.
2. The file reference number.
3. Any documents referred to in the rebuttal.
4. Statements (that are attested to be true and correct to the best of the individual's knowledge and belief) by the applicant or other persons in support of the rebuttal.

#### H. DOHA APPEAL DECISION

Except as provided in paragraph P to this Appendix, the DOHA must base its decision on the written record, including the recommendation and administrative report and any rebuttal by the applicant. The written decision must:

1. Affirm, modify, reverse, or remand the initial determination and decide the application on its merits or return the application to the Component concerned for investigation and processing for an initial determination on the merits according to Appendix D to this part.
2. State the amount of the waiver application that is granted and the amount denied and/or that the application was or was not received within the statutory time limit, as appropriate.
3. Explain the reasons for the decision.

#### I. PROCESSING AFTER THE APPEAL DECISION

After issuing an appeal decision, the DOHA must:

1. Send the applicant the decision and notify the applicant of:

- i. The appropriate Component action to resolve the debt as a consequence of the decision if it is or becomes a final action (as explained in paragraph J to this Appendix).

- ii. The procedures under this Appendix to request reconsideration (as explained in paragraphs K through M to this Appendix), if the decision does not grant the waiver application to the extent requested, or does not contain a finding of timely receipt, when applicable.

2. Notify the Component concerned of the decision and the appropriate Component action to resolve the debt as a consequence of the decision.

#### J. FINALITY OF A DOHA APPEAL DECISION

An appeal decision that grants the waiver application to the extent requested on appeal, or that finds that the application was timely received, when applicable, is a final action when issued. An appeal decision is a final action if the DOHA does not receive a request for reconsideration within 30 days of the date of the appeal decision (plus any extension of up to 30 additional days granted by the DOHA for good cause shown). NOTE: In the case of a DOHA appeal decision issued before the effective date of this part that denied all or part of the waiver application, a request for reconsideration by the GC, DoD may be submitted within 60 days of the effective date of this part. The GC DoD shall consider such requests and affirm, modify, reverse, or remand the DOHA appeal decision. Requests for reconsideration by the GC, DoD received more than 60 days after the effective date of this part shall not be accepted. Requests must be submitted to the address in paragraph E.5. to this Appendix. The provisions of paragraph M to this Appendix apply.

#### K. WHO MAY REQUEST RECONSIDERATION

An applicant may request reconsideration of a DOHA appeal decision.

#### L. WHEN AND WHERE TO SUBMIT A REQUEST FOR RECONSIDERATION

The DOHA must receive a request for reconsideration within 30 days of the date of the appeal decision.<sup>2</sup> The DOHA may extend this period for up to an additional 30 days for good cause shown. No request for reconsideration may be accepted after this time has expired. A request for reconsideration must be

<sup>2</sup>Request for reconsideration by the GC, DoD must be received by the DOHA within 60 days of the effective date of this Instruction as explained in paragraph J of this appendix for appeal decisions issued before the effective date of this Instruction.

**Pt. 284, App. F**

sent to the DOHA at the address in paragraph E to this Appendix.

**M. CONTENT OF A REQUEST FOR RECONSIDERATION**

The requirements of paragraph C to this Appendix for the content of an appeal apply to a request for reconsideration.

**N. DOHA'S REVIEW OF A REQUEST FOR RECONSIDERATION**

No earlier than 31 days after the date of the appeal decision or the day after the last period for submitting a request, as extended, expires, the DOHA must:

1. Consider a request for reconsideration.
2. Affirm, modify, or reverse the appeal decision.
3. Prepare a response that explains the reasons for the finding.

**32 CFR Ch. I (7–1–13 Edition)**

4. Send the response to the applicant and the Component concerned and notify them of the appropriate action on the debt.

**O. FINALITY OF A DOHA RECONSIDERATION DECISION**

The response is a final action. It is precedent in the consideration of all waiver applications covered by this part unless otherwise stated in the document.

**P. CONSIDERATION OF APPEALS AND REQUESTS FOR RECONSIDERATION**

When considering an appeal or request for reconsideration, the DOHA may:

1. Take administrative notice of matters that are generally known or are capable of confirmation by resort to sources whose accuracy cannot reasonably be questioned.
2. Remand a matter to the Component with instructions to provide additional information.